

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
2006 Quadrennial Regulatory Review – Review ) MB Docket No. 06-121  
of the Commission's Broadcast Ownership )  
Rules and Other Rules Adopted Pursuant to )  
Section 202 of the Telecommunications Act of 1996 )

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COMMENTS OF  
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AND FOX TELEVISION STATIONS, INC.

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## **SUMMARY**

In conducting its 2002 Biennial Regulatory Review, the Commission examined the effects of its Newspaper-Broadcast Cross-Ownership ("NBCO") rules on competition, localism, and diversity. As a result of this examination, the Commission correctly determined that its blanket ban on the cross-ownership of broadcast licenses and daily newspapers was no longer necessary in the public interest. This determination was upheld on review by the U.S. Court of Appeals for the Third Circuit. In the face of this record, the NBCO rules recently proposed by Chairman Martin amount to an unwarranted regulatory step backward, inconsistent with reasoned decisionmaking.

The proposed rules would limit cross-ownership to the top 20 Designated Market Areas ("DMA"), would permit only combinations that included a daily newspaper plus a single broadcast outlet ("Newspaper Plus One"), would prohibit newspaper cross-ownership with a "Top Four" ranked television station in a DMA, and would invite re-litigation of the rules with every application. These rules would result in harm to competition and diversity, especially to the extent that they could affect the successful cross-ownership of *The New York Post*, WNYW(TV) and WWOR-TV in the New York DMA.

News Corporation ("News Corp.") and Fox Television Stations, Inc. ("FTS") urge the Commission to eliminate the NBCO rules in markets as large and diverse as New York City. At the very least, in the event that the Commission were to adopt the Chairman's proposals, News Corp. and FTS propose a new note to Section 73.3555, which would prevent some of the problems that could otherwise result.

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**COMMENTS OF  
NEWS CORPORATION  
AND FOX TELEVISION STATIONS, INC.**

Fox Television Stations, Inc. ("FTS") and News Corporation ("News Corp.") submit these comments in response to the proposals made by Commission Chairman Kevin J. Martin for modification of the Newspaper/Broadcast Cross-Ownership Rule (the "NBCO" rule).<sup>1</sup>

**1. The Commission, Affirmed by the Third Circuit, Correctly Concluded in 2003 that the NBCO Rule Was No Longer Necessary in the Public Interest and the Flat Ban Should be Repealed.**

In 2003, having examined the effects of cross-ownership on competition, localism, and diversity, the Commission determined that its blanket ban on the cross-ownership of broadcast licenses and daily newspapers<sup>2</sup> was no longer necessary in the public interest.<sup>3</sup> The Commission found that "most advertisers do not view newspapers, television stations, and radio stations as

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<sup>1</sup> See "Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule," (News Release, November 13, 2007) (inviting comments to be filed in this docket by December 11, 2007).

<sup>2</sup> 47 C.F.R. § 73.3555(d).

<sup>3</sup> 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd. 13620 ("2002 Biennial Review Order").

close substitutes"<sup>4</sup> and that "consumers experience print and electronic media in very different ways."<sup>5</sup> It therefore concluded that "a newspaper-broadcast combination cannot adversely affect competition in any relevant product market."<sup>6</sup> The Commission determined that the NBCO rule "is not necessary to promote broadcasters' provision of local news and information programming. Indeed, evidence suggests that the rule actually works to inhibit such programming."<sup>7</sup> Finally, addressing media diversity, the Commission determined that "the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints."<sup>8</sup> The inevitable conclusion was that the NBCO actually harmed diversity.<sup>9</sup>

On appeal, the U.S. Court of Appeals for the Third Circuit, while disagreeing with many other decisions made in the 2002 Biennial Review proceeding, found that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."<sup>10</sup>

In the intervening years, nothing has developed in the robust media landscape that would call into question the Commission's analysis of the effects of the NBCO rule on competition, localism, and diversity, or its determination to eliminate the rule in large markets. Indeed, the

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<sup>4</sup> 2002 Biennial Review Order, ¶ 332.

<sup>5</sup> *Id.* at ¶ 341.

<sup>6</sup> *Id.* at ¶ 341.

<sup>7</sup> *Id.* at ¶ 342.

<sup>8</sup> *Id.* at ¶ 358.

<sup>9</sup> *Id.* at ¶ 359.

<sup>10</sup> Prometheus Radio Project v. FCC, 373 F.3d 372, 398 (3d Cir. 2004).

rapid growth of the internet as an important communications medium and source of constantly updated information further supports and justifies the Commission's decision.<sup>11</sup>

In the face of the solid record supporting the complete elimination of the NBCO, Chairman Martin's proposal amounts to an unwarranted regulatory step backward. Indeed, the rules proposed by the Chairman represent a significant, unexplained departure from the precedent established in the 2002 Biennial Review Order. Such an abrupt about-face is inconsistent with the reasoned decisionmaking required of the Commission. An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.<sup>12</sup>

The proposed rules impose several limits to newspaper-broadcast cross-ownership that were not part of the 2003 rules adopted by the Commission and upheld by the Third Circuit: Newspaper cross-ownership would be limited to a single television or radio station in the newspaper's Nielsen Designated Market Area ("DMA") (the "Newspaper Plus One" rule). Cross-ownership with a top-four ranked television station would not be permitted (the "Top Four" limit). Cross-ownership would be allowed only in the twenty largest DMAs. The rules create only a "presumption" that cross-ownership is in the public interest, requiring parties to relitigate the issue with each application. Instead of attempting to hastily construct a new set of cross-ownership rules, the Commission should reaffirm the decision it made in the 2002 Biennial

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<sup>11</sup> See "Comments of Fox Entertainment Group, Inc. and Fox Television Holdings, Inc." filed in this Docket No. 06-121 on October 23, 2006.

<sup>12</sup> Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970); *cert. denied*, 403 U.S. 923 (1971). See also Office of Communication of the United Church of Christ v. FCC, 560 F.2d 439 (2d Cir. 1977) ("[C]hanges in policy must be rationally and explicitly justified in order to assure 'that the standard is being changed and not ignored, and . . . that [the agency] is faithful and not indifferent to the rule of law.'").

Order, which was clearly supported by the record and endorsed by the Third Circuit, and abolish the NBCO in large markets, such as New York City.

2. **The Combination of *The New York Post*, WNYW (TV) and WWOR-TV Demonstrates That Cross-Ownership Benefits the Public.**

FTS and News Corp. firmly believe that the Commission got it right in 2003 and that the public interest does not require restrictions on ownership of newspapers and broadcast outlets in the same DMA. The approach that has been proposed by Chairman Martin, in particular the Newspaper Plus One rule and the Top Four limit, is not necessary to protect or promote the public interest and, in fact, would disserve the goals of competition, localism, and diversity. This is most evident from an examination of the kind of public interest advantages FTS and News Corp. currently provide the New York DMA through the common ownership of WNYW(TV), WWOR-TV, and *The New York Post*.

News Corp. first acquired the *Post* — the nation's oldest continuously published daily newspaper — in 1976. News Corp.'s subsidiary, FTS, entered television broadcasting a decade later with its acquisition of six television stations from Metromedia, Inc., including WNYW(TV) in the New York DMA.<sup>13</sup> The Commission's cross-ownership prohibition forced News Corp. to divest the *Post* in 1988.<sup>14</sup> The subsequent purchaser of the newspaper ultimately proved unsuccessful, and its corporate parent was forced to seek bankruptcy protection in 1993.<sup>15</sup>

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<sup>13</sup> The five former Metromedia television stations, which are still operated and owned by FTS, are WNYW(TV), New York, New York; KTTV-TV, Los Angeles, California; WFLD-TV, Chicago, Illinois; WTTG-TV, Washington, DC; and KRIV-TV, Houston, Texas.

<sup>14</sup> See *Applications of Metromedia Radio & Television Inc. (Assignor) to News America Television Incorporated (Assignee)*, Memorandum Opinion & Order, 102 F.C.C. 2d 1334, 1349, ¶ 28 (1985) (granting News Corp. a 24-month waiver to comply with the cross-ownership rule in New York and Chicago and concluding that the "existence of the numerous media outlets serving New York, Chicago and surrounding areas supports [the Commission's] conclusion that no undue concentration of the media would result from a limited waiver"). News Corp. divested the *Chicago Sun Times* in 1986 soon after grant of the temporary waiver.

(cont'd)

When it became apparent there were no qualified purchasers or other viable alternatives that would ensure the survival of the *Post*, News Corp. agreed to reassume ownership of the newspaper provided it was granted a permanent waiver of the cross-ownership rule.<sup>16</sup> The Commission granted News Corp's request for the permanent waiver in the summer of 1993.<sup>17</sup> In doing so, the FCC found that News Corp. had "amply justified" its request for the permanent waiver and expressly concluded that the permanent waiver would not endanger competition or diversity.<sup>18</sup>

FTS acquired WWOR-TV, Secaucus, New Jersey, in connection with its 2001 acquisition of the 10 television stations previously controlled by Chris-Craft Industries, Inc.<sup>19</sup> FTS' purchase of WWOR-TV fully complied with the Commission's local television ownership rule, which permits common ownership of two television stations in the same DMA if, at the time the assignment application was filed: (1) at least one of the stations was not ranked among the top four stations in the DMA based on the most recent all-day (9:00 a.m. – midnight) audience share as measured by Nielsen Media Research; and (2) more than eight independently owned, full-

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News Corp. was similarly required to choose television over newspaper ownership in Boston where it sold the *Boston Herald* in 1994 in order to repurchase WFXT(TV). See John R. Wilke, *News Corp. Plans to Sell Boston Herald to Purcell, Paper's Longtime Publisher*, Wall St. J., Feb. 7, 1994, at B3B.

<sup>15</sup> See *Fox Television Stations Inc., Licensee of Television Station WNYW, New York, New York, Request for Waiver of the Broadcast-Newspaper Cross-Ownership Rule Relating to WNYW and the New York Post*, Declaratory Ruling, 8 FCC Rcd 5341, 5341-42, ¶¶ 3-12 (1993), *aff'd sub nom. Metropolitan Council of NAACP Branch v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995) ("1993 Permanent Waiver").

<sup>16</sup> See *1993 Permanent Waiver*, 8 FCC Rcd at 5343, ¶ 12. News Corp. acquired the *Post* through an indirect wholly owned subsidiary.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 5350, 5353, ¶¶ 44, 52.

<sup>19</sup> See *Fox/Chris-Craft Order*, 16 FCC Rcd at 14987-89, ¶¶ 40-45.



power and operational stations (commercial and noncommercial) were licensed in the DMA.<sup>20</sup>

At the time of FTS' acquisition, neither WNYW(TV) nor WWOR-TV was ranked in the top-four in terms of audience share and there were 20 independently owned and operating full-power stations in the DMA.<sup>21</sup> The Commission granted FTS a temporary waiver of the NBCO rule, allowing common ownership of WWOR-TV and the *Post*, based on "the diverse nature of the New York market, the clearly non-dominant position of the *Post* in that market, as well as the *Post*'s unique history of significant financial difficulties."<sup>22</sup>

Last year, in connection with a recapitalization of the ownership of FTS, the Commission conducted a *de novo* review of the permanent WNYW waiver and the temporary WWOR-TV waiver and found that "The demonstrable public interest benefits that have resulted from the common ownership of these media properties have justified the existing waivers."<sup>23</sup> More specifically, the Commission found that the financial vulnerability of the *Post* and the unique diversity of the New York market supported the continued common ownership of WNYW(TV) and the *Post*, and a temporary waiver to permit FTS' continued ownership of WWOR-TV.<sup>24</sup>

Today, WNYW(TV), a FOX Network affiliate, is consistently among the top-four-rated television stations in the market and broadcasts an average of 29 hours of news and public affairs programming each week. WWOR-TV, a MyNetworkTV affiliate, is still not among the top four stations. It broadcasts a locally produced hourly newscast each night, scheduled hourly news

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<sup>20</sup> *Id.* at 14982, ¶ 26.

<sup>21</sup> See Applications for Assignment of License, File Nos. BALCT-20000918ABB *et al.*, Exhibit 4.

<sup>22</sup> See *Fox/Chris-Craft Order*, 16 FCC Rcd at 14989, ¶ 45.

<sup>23</sup> K. Rupert Murdoch, 21 FCC Rcd 11499, ¶ 7 (2006); *appeal pending sub nom. Free Press v. FCC* (D.C. Cir. 06-1369). The D.C. Circuit Court is holding this appeal in abeyance pending the resolution of petitions for reconsideration that were filed with the Commission.

<sup>24</sup> *Id.* at ¶ 8.

updates between 4:00 and 7:00 p.m., 1 hour of public affairs programming weekly (one-half-hour of which is a forum for New Jersey politicians to reach out to residents of the state), live games of local professional sports teams, and the broadcast and production of local public service announcements (10,000 broadcast in the last year) and programs such as the McDonald's Gospelfest, the MDA Telethon, the National Puerto Rico Day Parade, and the United Negro College Fund tribute to Smokey Robinson. The FTS duopoly in the New York DMA continues to fully comply with the Commission's multiple ownership rules. *The New York Post*, along with the U.S. daily newspaper industry as a whole, has suffered a precipitous drop in advertising and newsstand revenues.<sup>25</sup> Yet News Corp. continues to support the newspaper and has made hundreds of millions of dollars of improvements to the newspaper's physical plant.<sup>26</sup>

**3. There is No Need to Restrict Cross-Ownership to a Single Broadcast Outlet.**

In light of the FCC's unchallenged finding that the NBCO rule is no longer necessary to protect or promote competition, localism, or diversity, there is no justification for the proposal to restrict cross-ownership to a single broadcast outlet. These three goals are adequately protected by the Commission's multiple ownership rules; if an ownership combination falls within such rules, it should not be subjected to another, unnecessary test just because a daily newspaper is involved.

In reaching a decision, the Commission must ensure that it has examined the relevant data and has articulated a satisfactory explanation for its action, including a "rational connection

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<sup>25</sup> See Louis Hau, "Newspaper Ad Decline Accelerates," *Forbes.com* (August 31, 2007); Emily Steel, "Newspapers' Ad Sales Show Accelerating Drop," *The Wall Street Journal Online* (July 18, 2007); Katharine Q. Seelye, "Drop in Ad Revenue Raises Tough Questions for Newspapers," *NYTimes.com* (March 26, 2007).

<sup>26</sup> Declaration of Geoff Booth, General Manager of the *New York Post*, Exhibit A to "Petition for Modification of Permanent Waiver" of News America Incorporated and The News Corporation Limited, filed September 22, 2004.

between the facts found and the choice made."<sup>27</sup> In a situation where the Commission offers an explanation for its decision that runs counter to the evidence before it, a reviewing court may find the resulting rule to be arbitrary and capricious.<sup>28</sup> The Commission examined the evidence that was before it in the 2002 Biennial Review, exercised reasoned decisionmaking, and received the endorsement of the Third Circuit. It should not come to a different conclusion today in the face of substantially similar, or even more persuasive evidence.

From a competition standpoint, in the 2002 Biennial Review Order the Commission recognized that advertisers do not view newspapers, television stations, and radio stations as close substitutes. Additionally, it found that consumers experience print and electronic media in very different ways. Advertising is the relevant product market; accordingly, cross-media restraints are not necessary to prevent anticompetitive combinations.<sup>29</sup> The Commission's existing multiple ownership rules already adequately protect against anticompetitive behavior engendered by excessive holdings in either radio or television. The proposed Newspaper Plus One rule would provide no additional benefits to competition.

Nor is the Newspaper Plus One rule required to protect localism. The record in the 2002 Biennial Review suggests that the rule would actually work to inhibit the provision of local news and information programming.<sup>30</sup> The Commission noted a direct correlation between the association of a broadcast outlet with a published daily newspaper and both the quantity and

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<sup>27</sup> Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

<sup>28</sup> See Prometheus Radio Project v. FCC, 373 F.3d 372, 390 (2004); citing SEC v. Chenery Corp., 332 U.S. 194, 196 (1947).

<sup>29</sup> 2002 Biennial Review Order, ¶¶ 332, 341.

<sup>30</sup> 2002 Biennial Review Order, ¶ 342.

quality of the local broadcast news.<sup>31</sup> With the news and public interest programming described above, the FTS stations exemplify this principle.

Finally, the Newspaper Plus One rule does not serve diversity. The New York DMA, for example, is one of the most media-diverse areas in the country: 23 licensed broadcast television stations, 136 independently owned radio stations, and 29 local daily newspapers all compete vigorously for consumers' attention. Additionally, new media, most significantly the internet, are rapidly becoming major sources of news and information. As of 2006, nearly 150 million Americans (or about 75 percent of the country's adult population) were internet users – about 50 percent higher than the number from the year 2000.<sup>32</sup> Nearly 90 percent of U.S. teenagers are web users.<sup>33</sup> And three-quarters of active home web users in the United States access the internet with a broadband connection.<sup>34</sup> These numbers alone demonstrate that diversity of media voices is not an issue in New York City.

Under the Commission's existing multiple ownership rules, a single entity in a market the size of New York could own, for example, two television stations and up to six radio stations.<sup>35</sup> Newspaper Plus One, where the "One" broadcast facility is a television station, would assign to the newspaper the equivalent impact of a second television station and six radio stations. This would severely overestimate the actual circulation of the daily newspaper. In 2006, for example,

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<sup>31</sup> *Id.* at ¶¶ 343 - 44.

<sup>32</sup> *See How the Internet is Changing Consumer Behavior and Expectations*, Lee Rainie, Director, Pew Internet & American Life Project, May 9, 2006, at 5.

<sup>33</sup> *See Generations Online*, Data Memo, Pew Internet & American Life Project, December 2005, at 1.

<sup>34</sup> *See U.S. Broadband Composition Reaches 72 Percent at Home*, Nielsen//NetRatings, July 21, 2006, at 1.

<sup>35</sup> 47 CFR § 73.3555(c)(2)(i)(A).

*The New York Post* had the third-highest circulation among New York daily newspapers: 688,941, yet only covered 7.7% of the New York DMA.

There is no need to adopt rules that prevent the creation of combinations that, as the Commission has already recognized, further the public interest. Newspaper cross-ownership should be permitted with any set of broadcast properties that otherwise comports with the Commission's multiple ownership rules.

4. **Prohibiting a Cross-Owned Television Station from Being One of the Top Four Does Not Serve the Public Interest.**

The concept of using the Top Four stations as ranked by a national ratings service as the basis for ownership regulation originated in the 1999 local television ownership rulemaking. At best, the concept made theoretical sense in that context because the issue was market concentration in advertising, which is dependent on ratings, and which the Commission feared could lead to anticompetitive behavior.<sup>36</sup> In the context of the NBCO, however, the Commission has acknowledged that radio, television, and newspapers are not close substitutes for advertisers, and that consumers experience print and electronic media in different ways. The focus must therefore be on diversity and the provision of local news and public service programming to the public -- not a standard based on market share.

The Local Ownership Order also noted that Top Four stations were most likely to have local newscasts, whereas lower-ranked stations often did not.<sup>37</sup> The proposed Top Four limit, therefore, would prohibit the station owners who value local news the most, and who have the greatest news experience and resources, from combining forces with daily newspapers in a way

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<sup>36</sup> Review of the Commission's Regulations Governing Television Broadcasting, 14 FCC Rcd 12903 (1999) (the "Local Ownership Order"), ¶ 66.

<sup>37</sup> *Id.* at ¶ 66.

that would result in more and better news coverage. Additionally, the Commission has already recognized that synergies and efficiencies that can be realized from newspaper-broadcast combinations can have a positive impact on both the amount and diversity of news available in local markets. These benefits can be achieved without sacrificing independent editorial judgment as to which stories are actually aired or published and the degree of emphasis a particular news story receives. The overall result is greater, not less, service to the public and increased diversity of expression.

It makes no sense to restrict the very companies that are most committed to and successful in providing local news to the public. This Top Four restriction is also antithetical to the First Amendment, which prohibits government from precluding a speaker from acquiring additional outlets on the basis of the popularity of the speaker's content.<sup>38</sup>

Furthermore, the Top Four limit would perversely bar the most successful stations from stepping in to rescue an ailing print outlet in their markets. It would allow only those broadcasters that haven't been as successful in meeting the public's need for local information to become newspaper owners. If the Commission is serious about adopting rules that will improve the health of the newspaper industry,<sup>39</sup> the Top Four limit cannot be one of the elements of any cross-ownership restriction.

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<sup>38</sup> Cf. Boy Scouts of America v. Dale, 530 U.S. 640, 660 (2000) (citing Texas v. Johnson, 491 U.S. 397 (1989); Brandenburg v. Ohio, 395 U.S. 444 (1969)) ("The First Amendment protects expression, be it of the popular variety or not. And the fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.").

<sup>39</sup> See, "The Daily Show" by Kevin J. Martin, *The New York Times*, November 13, 2007, attached to FCC News Release, *supra*, note 1 ("If we don't act to improve the health of the newspaper industry, we will see newspapers wither and die.").

**5. The Commission Should Adopt Definitive Rules, Not Presumptions.**

Any restrictions on newspaper-broadcast cross-ownership should apply, if at all, only in clearly defined situations. The proposed rules only create a "presumption." Every transfer or assignment application before the Commission requires a finding that its grant will serve the public interest, so the Commission always has the opportunity to review the particulars of each case and consider public input. But the deliberation should be over whether or not the set of circumstances before the Commission meets the requirements of its rules. The Commission should not invite re-litigation of its rules with every application.

**6. Recommendation and Conclusion.**

The record clearly supports the abolition of the NBCO, as the Commission concluded in the 2002 Biennial Review Order and as was upheld by the Third Circuit. News Corp. and FTS urge the Commission to take this action now. At the very least, the Commission should not create rules that would affect the existing *New York Post*/FTS cross-ownership, which has saved a financially troubled daily newspaper and contributes to media diversity in the New York DMA.

The attached mark-up provides one way in which the proposed rules could be altered to achieve these ends. This proposal would add a new Note to Section 73.3555, which clarifies that in situations where the Commission has made a determination that a newspaper-broadcast cross-ownership is in the public interest and has granted a permanent waiver, the broadcast station that is the subject of that waiver would not be counted under the Newspaper Plus One rule in a subsequent application. In the case of News Corp. and FTS, for instance, because WNYW(TV) and the *Post* are the subject of a permanent waiver of the NBCO, cross-ownership of the *Post*, WNYW(TV), and WWOR-TV would also be permitted.

For all of the reasons set forth above, News Corp. and FTS request that the Commission restate the decision on the NBCO rule that it made in its 2002 Biennial Review Order, or in the alternative, adopt the attached note to Section 73.3555.

Respectfully submitted,

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## PROPOSED CHANGE

### § 73.3555 Multiple Ownership.

#### (d) Daily newspaper cross-ownership rule.

(1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(ii) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(iii) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(2) Paragraph (1) shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1).

(3) In making a finding under paragraph (2), the Commission shall consider, among other factors:

(i) whether the cross-ownership will increase the amount of local news disseminated through the affected media outlets in the combination;

(ii) whether each affected media outlet in the combination will exercise its own independent news judgment;

(iii) the level of concentration in the Nielsen Designated Market Area (DMA); and

(iv) the financial condition of the newspaper, and if the newspaper is in financial distress, the owner's commitment to invest significantly in newsroom operations.

(4) In making a finding under paragraph (2), there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1), provided that, with respect to a combination including a commercial TV station,

(i) The station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power commercial TV broadcast stations and major newspapers).

(5) In making a finding under paragraph (2), there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1) in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (4).

NOTE 13 TO § 73.3555: Paragraph (d)(1) shall not apply to the cross-ownership of a broadcast station and a daily newspaper for which the Commission has previously granted a permanent waiver of any rule which would have otherwise prohibited such cross-ownership.